



February 26, 2005

Marlene H. Fortch,
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Suite TW-A325
Washington, DC 20554

Reference: 04-440 Petition for DSL Forbearance by Verizon, specifically Comments by BellSouth

I am a small, rural Internet Access Provider located in Brownwood, Texas. My company serves portions of four counties in Texas based on local calling areas. During the past year, predatory pricing, slamming and an expensive and extensive DSL marketing campaign by Verizon Online has succeeded in reducing our customer count and cash flow by 20%.

We have a wholesale contract with Verizon wherein the monthly fee exceeds Verizon's lowest retail rate, plus we must pay expensive rural rates for Internet Backbone and tariff rates to connect that backbone to the Verizon DSL backbone that serves our areas. Obviously we cannot compete with Verizon Online based on price or the ability to wage an expensive and pervasive marketing campaign.

I am not a Lawyer, nor do I have the time and energy left over from attempting to save a failing business to look up all of the proceedings of the past that BellSouth references in its comment. What I do have is daily contact with customers in this area who, for their own reasons, select an ISP, and certain knowledge of the results of that selection, plus the choices they have or do not have, as the case may be.

I would like to provide my own analysis of BellSouth's comment. These comments also apply to Verizon's position [and others] that there is extensive competition in the marketplace.

On Page One, BellSouth states:

"The existence of a *vibrantly* competitive intermodal market for broadband is crucial to the analysis here." [The emphasis is my own.] BellSouth goes on to say, "That is so because the Commission has repeatedly concluded that competition, not regulation, is the best way to prevent unreasonable discrimination, protect consumers, and further the public interest,² which are the relevant criteria for forbearance." The footnote then goes on to make reference to something about National Directory Assistance, and a claim that TA96 "embodies a philosophy that competition is the most effective means of producing the marketplace results that best serve the public interest."

I totally agree with the BellSouth comment quoted above, but not its conclusion or solution.

A *vibrantly* competitive market brings up the picture of a hoard of competitors all fighting for a piece of the action, and thereby giving consumers more choice, better service and lower prices. When it comes to broadband in my neck of the woods, no one has the ability to compete effectively with Verizon.

In fact, I don't know where such a marketplace does exist except in the imagination of the BellSouth Lawyer [and others] who filed comments that such a marketplace exists.

a. In my four counties, cable does not offer broadband except in one location, Brady, where they own most of the broadband market and also charge a somewhat higher price than Verizon. They own the market because they were the first to offer the service. They recently had a price increase and we have been told they did not lose their market share. We have a Department of Agriculture backed 802.11b wireless operator using unregulated spectrum, two coops and a small, private ILEC as well as two self-funded wireless operators and a TIFF grant operator using unregulated spectrum, plus one other Verizon DSL reseller, and a cellular operator selling broadband.



None of those companies created any problems for us up until Verizon Online entered the market.

I listed all of the operators in this area in order to give the appearance of a *vibrant* competitive atmosphere - as a demonstration of how ILEC Lawyers are using hyperbole to sell their position. In point of fact, here is what is really going on.

1. The infrastructure for most of the cable operators in this area is too old for broadband. We have heard about upgrades for years, but it hasn't happened. Even IF they offered broadband, it would be limited to those served by cable and in Brown County at least, satellite TV is preferred over cable.
2. The coops and the small ILEC offer service in their areas ONLY. The one Coop that tried service outside their own area signed up five customers in six months with a wireless offering.
3. The Department of Agriculture funded company capitalized CPE (five year payout) and the network, plus marketing, but after 18 months of trying, they have only signed up about 1,500 customers for this area plus all of the other areas where they have installed network. It can take six weeks to install, and when the storms come through, it can take days and weeks to restore service.
4. The two self-funded wireless operators signed up a few hundred customers, but the cost of CPE limited their ability to penetrate the market. The operation of the TIFF grant wireless has turned into a joke.
5. Overall, wireless operations cover less than 30% of the geography in the four counties.

In other words, customer access, ability to serve and equipment is thus demonstrated as a necessary part of a *vibrant* competitive market if it is to be characterized in those terms. In this market, the two Coops own their territory with no competitors allowed, as is the case with the small, private ILEC. The cable companies don't have their act together for the most part. The wireless operators have a problem with geography, interference, weather, cash, management, equipment and reliability.

b. To *claim* a *vibrantly* competitive market, one must define what that means and then substantiate that the definition has been met. None of the proponents of that position have met that test.

1. A single source for a product cannot lay claim to a *vibrantly* competitive market.
2. Two sources for a product can seldom lay claim to a *vibrantly* competitive market.
3. Future sources of a product can only be labeled as speculative, instead of contributing to a *vibrantly* competitive market.
4. Three or more sources of a product can sometimes be characterized as *vibrantly* competitive if the competitors all have adequate capital, ability to perform, the will to perform and a level playing field upon which to perform.
5. Finally, a *vibrantly* competitive market must mean that potential users MUST have the current ability to select from among a group of competitors.

By any test, the area in which my company operates could not be considered as one that is a *vibrantly* competitive marketplace for broadband. In this market, the sole choice for the vast majority of consumers is a) their local coop or ILEC, or b) Verizon DSL. In those areas also served by wireless, the consumer can pay \$500 or more for CPE and \$50.00 a month, or Verizon DSL, except in the area served by Pegasus, the beneficiary of the Department of Agriculture loan. In the later case, encompassing less than 20% of the geographic footprint of our service area, there are additional considerations that have to do with contracts, trees, hills and customer service that all tend to drive the customer back to Verizon.

c. TA96 did promote competition as serving the public interest. To claim Forbearance and an ILEC monopoly over DSL as serving the public interest in a competitive way is a perversion of the intent of TA96 in my opinion.

Through predatory pricing and other unsavory business practices as detailed in my original comments under 04-440, Verizon now controls 90% of the DSL market where service is provided. This is a monopoly by any definition, not a *vibrantly* competitive market.



If Verizon treated its wholesale customers (other than Verizon Online) as well as it treats Verizon Online, there would be a **vibrantly** competitive market in this area for broadband services instead of a near Verizon monopoly.

d. The area in which I operate cannot be classed as unusual. As an example, about sixty miles to the north of me, Bryan Jackson operates Txol.net, a local ISP and computer shop in Eastland, Texas. Mr. Jackson has seen his customer base erode from a high of 2,500 to 1,500 due to predatory pricing from SBC.

He has attempted to generate a wholesale DSL contract with SBC but has been delayed for five months while SBC itself has signed up customers right and left. I know of several other instances where SBC delayed a wholesale agreement for six months in the interest of benefiting their own operation. This comes as no great surprise since SBC is well known in the industry for its rapacious and oft-times unethical business practices against competitors that far exceed even those employed by Verizon and the other RBOCs.

Wireless 802.11 has met with some success for him, but capital costs for CPE is high (more so than DSL) so customer acceptance has been limited.

e. It could be that urban areas are more competitive. To test this concept, I asked someone who lives in Garland, Texas (Dallas suburb) about their choices. He said he had a choice between ComCast and Verizon. He knew of no other choices. He had formally used Verizon but because customer service was terrible, he had recently switched to Comcast. For \$32.00 a month for a year, then \$45 a month, he has a tested upload of 4.5Mb/300Kb compared to the sometimes 1.2Mb/128Mb when he was on Verizon. While he is thrilled at the speed increase, he is less than thrilled with Comcast's customer service.

Thus his choices are: If he wants cable, he has a choice between Comcast or Satellite (two operators). If he wants broadband, he can select Cable or Verizon. But only certain combinations work. For example, he cannot have satellite TV and Comcast broadband.

Given the duopoly in this urban market and unimpressive customer service by both vendors, how can one characterize this market as **vibrantly** anything except a **vibrant** duopoly?

I called various friends around the country and was greeted with the same response over and over - a perception that broadband was offered by one of two entities (if at all), the local phone company or the local cable company (about half the time). In a few cases, my contacts were aware that wireless might be available.

f. On page two of BellSouth's comment, much ado is made about the Commission's refusal to impose Computer Inquiry and common-carriage requirements on [cable companies]. That decision is currently before the Supreme Court. Although prior to a Supreme Court ruling, BellSouth makes the point that what is good for cable companies should be good for telephone companies.

This is a difficult argument to refute if it is the intention of the Commission to allow broadband access to the Internet to be controlled by a duopoly in those areas where there is cable and a monopoly (by definition) in those areas where cable does not operate.

While much ado is made about the **potential** for a **vibrantly** competitive market for broadband services, most consumers either have no choice, or perceive their choices to be either one of a duopoly between cable or the local phone company offering through its wholly owned subsidiary. Due to lack of funds, my own study was unscientific (to say the least), but on the other hand, I do not know that any independent surveys have been taken that would reveal the true extent of broadband competition from the consumer's perspective. Simply listing the number of lines lost, gained or competitor success measured in the total number of customers served is not a measure of competition.



Next Issue:

On page 4 of BellSouth's comments, that company graciously proposes a plan [as previously proposed by the High Tech Broadband Coalition] that [in their words] would put to rest claims that relief here will somehow doom the unaffiliated ISPs, which BellSouth in fact wants to continue to serve in order to maximize the utility of its network by carrying the greatest amount of traffic on that network, so they say.

As always with an RBOC plan that would seem to "protect" a potential rival either to itself or to an owned subsidiary, the "hooks" in the plan both said and unsaid, guarantee that the plan is a poison pill. In other words, beware of RBOCs bearing gifts.

Here is what I think is wrong with the overtly benign and covertly deadly proposal from BellSouth.

a. "...honor existing tariffs and agreements for an interim period of two years ..." What happens after two years? RBOCs tend to think in decades, not years.

b. "...and to make available for that same period a basic broadband transport service to unaffiliated ISPs with the same functionality and at the same cost (volume, terms and conditions) that it provides to its affiliated ISP."

1. A typical, undercapitalized ISP [compared to an RBOC] cannot hope to meet the volume commitments imposed by an RBOC that act to only benefit its wholly owned subsidiary.

2. Please refer to my original comments which detail [at length] the many methods used by an RBOC to advantage its wholly owned subsidiary to the point where a typical RBOC's subsidiary controls 90% of the DSL business enjoyed by that same RBOC and its unaffiliated wholesale customers control 10%. Verizon has 230 unaffiliated wholesale customers who collectively have 10% of the market.

3. A typical, undercapitalized ISP [compared to an RBOC] cannot hope to match the ability of an RBOC subsidiary to sell below cost indefinitely. Here is an example:

a. VOL sells DSL for \$34.95 unbundled. They pay Verizon \$26.95 plus USF, plus bandwidth costs, plus MSN. Their minimum out-of-pocket cost is at least \$35.00 without any allowance for all other associated costs except those four items, which acquisition does not include acquisition costs. Verizon pays them \$150.00 for each new account, which makes them whole against the up-front cost of installation (\$60.00), modem and filters (\$about \$60.00) with \$30.00 left over.

b. Now compare that to their lowest price business account, which is \$39.95 per month, with free installation and the first three months free. VOL thus does business whereby they are in the hole \$80.00 against out-of-pocket costs. At \$5.00 a month, they must then serve the customer for 16 months before cash flows begins to make a dent in all of the other costs of doing business in addition to the raw out-of-pocket cost.

c. On the other hand, a typical unaffiliated ISP pays Verizon \$28.95, plus USF, plus bandwidth that equals much more than what VOL pays, at least in rural areas. Here is how that works. We pay AT&T about \$700.00 a month for T1 (as an example) that cannot be plugged directly into the Verizon DSL "cloud" serving this LATA, which goes to a POP we rent in San Angelo. Then we pay Verizon about \$600 a month to go from our POP to their point of entry. We can serve about a 100 customers with one T1, which means that our out-of-pocket cost is roughly \$44.00 a month without considering any other costs of doing business. If we were able to serve say 2,000 customers, we could utilize a 45Mb ATM circuit at a cost of about \$20,000 per month, which wouldn't really lower our cost all that much.

d. We believe, as detailed in our previous comments, that VOL has the ability to acquire bandwidth through arrangements with, for example Level 3, which an unaffiliated ISP cannot match due to legacy arrangements. We also note that unaffiliated ISPs are not part of the "bundled" plans sold by Verizon and Verizon Online.



c. There is simply no way that an unaffiliated ISP can match either the cost structure or the willingness of an affiliated subsidiary to lose money over time. This is amply demonstrated by the simple fact that VOL controls 90% of the DSL market. Except for the minority of customers motivated by either a strong "buy local" mentality or who are knowledgeable enough to want and need local service, most consumers elect to subscribe to the lower price (in my opinion a temporarily lower price) offered by the affiliated ISP.

Simply put, Verizon is extracting customer base from unaffiliated ISPs and thereby placing in jeopardy the ability of said unaffiliated ISPs to stay in business. Hundreds have already gone out of business, with more to follow.

d. There is clear evidence that when BellSouth is left on its own, it will discriminate against unaffiliated ISPs: http://www.isp-planet.com/news/bellsouth_guilty.html and also refer to the news at: <http://www.computeruser.com/news/00/12/09/news6.html> The Kentucky PUC forced BellSouth to change its business practices.

e. In England, where regulation has insured a level playing field for broadband providers, 74% of consumers adopt unaffiliated providers, while only 26% adopt ILEC provisioning.

In other words, BellSouth has no objection to the Commission establishing a reasonable transition plan to ensure continuity of service as a condition of forbearance. Then BellSouth goes on to propose honoring what exists today. Well, woopie! What exists today is killing off my ISP and hundreds of ISPs just like me. And there is clear evidence at least in Kentucky that BellSouth discriminates against unaffiliated ISPs unless forced to do otherwise.

Conclusion:

BellSouth advances the notion that there is a *vibrantly* competitive by statement and not by evidence except for hearsay and adoption figures that are meaningless compared to any actual competition surveys that have not been made a part of the public record that I can find.

BellSouth itself has been found guilty of blatant discrimination against unaffiliated subsidiaries.

Unaffiliated ISPs cannot compete with below cost offerings by an affiliated subsidiary, especially when the ILEC (RBOC) also adopts various business practices that also discriminate against unaffiliated ISPs as detailed in the record.

I could continue to analyze the BellSouth comments at length, but no purpose would be served since the foundation that BellSouth attempts to establish is clearly specious.

J. L. Summers
General Manager
WTS Online, Inc
517 West Commerce
Brownwood, TX 76801
325 641 0144